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IN THE SUPREME COURT OF THE  
UNITED STATES

OCTOBER TERM, 1983

STATE OF ALABAMA, PETITIONER

VS.

LEWIS L. GANNAWAY, RESPONDENT

ON PETITION FOR A WRIT OF  
CERTIORARI TO THE SUPREME COURT AND  
COURT OF CRIMINAL APPEALS OF ALABAMA

REPLY BRIEF AND ARGUMENT

OF

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ATTORNEYS FOR PETITIONER

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REPLY ARGUMENT

The Petitioner hesitates to burden this Honorable Court with a brief in response to such obvious attempts to evade the inescapable as are presented in the Respondent's brief. However, a short response will at least serve to prevent these arguments from going unchallenged.

I.

IN GENERAL

The issue in this case was first raised by the Respondent's Motion to Suppress, which he filed in the Trial Court. This motion expressly relied on the Fourth Amendment to the United States Constitution. See the language quoted from the Respondent's motion in footnote 1 at page 5 of the Petition. Throughout the litigation in State court the Respondent's two part argument was:

1. The officers violated  
Section 15-5-9, Code of  
Alabama, 1975, and

2. Therefore, they violated  
the Fourth Amendment to the  
U.S. Constitution.

The State's response was:

(1) The officers did not  
violate the state statute, and,  
(2) even if they did, they did  
not violate the Fourth  
Amendment.

The Alabama Supreme Court accepted the Respondent's argument, holding that the state statute was violated and, relying on not less than four federal cases and one state case (a case which relied exclusively on the Fourth Amendment and federal case law), held that a violation of the state statute constituted ipso facto a violation of the Fourth Amendment. Four justices dissented on

Fourth Amendment grounds. The basic issue presented by the instant petition is:

"Does the Fourth Amendment require the suppression of evidence found in accordance with the Fourth Amendment but in technical violation of a state statute relating to the execution of search warrants?"  
(Petition, page I)

Now, the Respondent, who relied on the Fourth Amendment throughout the state court litigation and prevailed thereon, suddenly discovers that the Fourth Amendment has nothing at all to do with this case. This is absurd.

The Respondent's claim that the Petitioner is raising factual issues is shown to be false by the Statement of the Facts contained in the Petition (pages 9-14), which consists entirely of quotations of the findings-of-fact from the opinion of the Court of Criminal Appeals of Alabama, which the Alabama Supreme Court accepted, and quotations from the Supreme Court's own opinion. The Petitioner is not questioning the state court findings-of-fact but is, indeed, relying on them.

The Respondent says that United States v. Caceres (440 U.S. 741, 59 L.Ed. 2d 733, 99 S.Ct. 1465 [1979]) and Segura v. United States (\_\_\_\_ U.S., \_\_\_\_ L.Ed.2d \_\_\_, 104 S.Ct. 3380, 52 U.S.L. Wk 5128 [1984]) are not in point. Admittedly, if Segura had been available when the original Petition was filed, the Petitioner-State would not have relied

nearly so heavily on Caceres as it did. This is not because Caceres represents bad or inapplicable law but because Segura is "on all fours" with the instant case. See the Supplemental Petition. The only difference between Segura and the instant case is that in Segura the warrant was obtained after the illegal entry, while here the valid warrant was obtained prior to the technically illegal entry. Segura is obviously controlling in this case.

## II.

THIS CASE PRESENTS AN EXTREMELY  
IMPORTANT ISSUE OF U.S.  
CONSTITUTIONAL LAW

As pointed out in the Petition (pages 31-37) the lower federal and state courts consistently apply the Fourth Amendment decisions of this Honorable Court relating to searches incident to

warrantless arrests in homes<sup>1</sup> to arrests and searches pursuant to valid warrants. The Petition discusses five of these lower court decisions (pages 34-35), which were relied on by the Alabama Supreme Court, and these five represent hundreds of similar holdings. These holdings cannot be reconciled with Segura v. United States (\_\_\_\_ U.S.\_\_\_\_, \_\_\_\_ L.Ed. 2d \_\_\_\_,  
104 S.Ct. 3380, 52 U.S.L. Wk. 5128 [1984]), but Segura does not mention this Honorable Court's earlier cases on warrantless entry. This is because, as argued in the Petition, these cases are irrelevant to searches under warrants. However, it is obvious that the prevailing rule in the lower courts on

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<sup>1</sup>Miller v. United States 357 U.S. 301, 2 L.Ed.2d 1332, 78 S.Ct. 1190 (1958); Ker v. California 374 U.S. 23, 10 L.Ed.2d 726, 83 S.Ct. 1623 (1963); Sabbath v. United States 391 U.S. 585, 20 L.Ed.2d 828, 88 S.Ct. 1755 (1968)

a point which commonly arises is utterly inconsistent with the policy of this Honorable Court. This case then presents an issue of U.S. Constitutional law of extreme importance to the nation as a whole.

### CONCLUSION

In conclusion, the Petitioner, the State of Alabama, again respectfully submits that the decisions and opinions of the Honorable Supreme Court of Alabama in this case and of the Court of Criminal Appeals conforming thereto, present conflicts with prior decisions and opinions of this Honorable Court and incorrectly resolved several novel questions under the Fourth Amendment. For these reasons, the Petitioner again prays that this Honorable Court will issue the writ of certiorari and review the decisions and opinions of the Honorable Appellate Courts of Alabama and on such review will reverse the decisions of said Courts to the extent that the same hold that the conduct of the officers in this case compelled the suppression of the evidence they found under the Fourth Amendment Exclusionary Rule or, in the

Alternative, will vacate and remand this cause for reconsideration in light of the later Segura v. United States, above.

Respectfully submitted,

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CHARLES A. GRADDICK  
ATTORNEY GENERAL

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GERRILYN V. GRANT  
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, do hereby certify that on this \_\_\_\_\_ day of December, 1984, I did serve the requisite number of copies of the foregoing on the Attorneys for Lewis L. Gannaway, Respondent, by mailing same to them, first class postage prepaid and addressed as follows:

Hon. John C. Falkenberry  
Hon. Frances Heidt  
Hon. Donald W. Stewart  
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